HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1273 of 2003

Bhagwati Prasad vs. State and others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision. 22.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1273 of 2003 (SS)

Bhagwati Prasad Juyal s/o Sri Mahesanand
Juyal R/o Village and P.O. Thalishan,
Pauri Garhwal ….…… Petitioner

Versus

1. State of Uttaranchal
2. Director, Panchayati Raj Uttaranchal,
   Dehradun.
3. District Panchayat Raj Officer,
   Pauri Garhwal ……. Respondents

Sri J.P. Joshi, Advocate for the petitioner
Standing Counsel for the respondent

Dated: 22.10.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The present writ petition has been filed for issue of a writ or direction in the nature of certiorari calling for the records and quashing the order dated 9.10.2003 passed by the respondent transferring the petitioner from District Pauri Garhwal to District Rudraprayag.

Briefly stated the facts giving rise to the present writ petition are that the petitioner is posted as Gaon Panchayat Adhikari, village

Maili, District Pauri Garhwal to District Rudraprayag. The petitioner has been transferred twice in two months. The respondent authorities are mala fide exercising their power of transfer. The petitioner has further stated that the children of the petitioner are studying in school and it is very difficult for the petitioner of shift the children at the transferred place in the mid academic session.

The transfer order shows that the petitioner has been transferred in the administrative exigency as well as in the public interest and three persons were transferred by the order dated 9.10.2003.

So far as the transfer is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or

orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner are at liberty to approach the higher authority.

The learned counsel for the petitioner has placed reliance on the case of Director of School Education vs. O. Karuppa Thevan and another (1994 Supp (2) Supreme Court Cases 666. The Apex Court has held as under:

"When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service

are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

The petitioner may make a representation to the higher authority of the Department within a period of three weeks after obtaining certified copy of the order who shall pass appropriate orders in the light of the observations made above after hearing the petitioner. The transfer order may be kept in abeyance till the present academic session.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

22.10.2003 **(Rajesh Tandon, J.)**
*Dhyani